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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/544,357	04/06/2000	Donald A Shockey	SRIIP028	8056

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EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 12/13/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/544,357	SHOCKEY ET AL.	
	Examiner	Art Unit	
	Stephen M. Johnson	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 October 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) 5,13,15,20,21,42,43,47 and 75 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6-12,14,16-19,22-41,44-46,48-74 and 76-80 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-80 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 49-79 have been renumbered as claims 50-80 pursuant to 37 CFR 1.126. The claim dependency of these claims has also been changed to correspond to the new numbering.

2. Applicant's election without traverse of species G (fig. 17) in Paper No. 5 is acknowledged.

Claims 5, 13, 15, 20-21, 42-43, 47, and 75 are withdrawn from consideration as being directed to non-elected species. Claims 1-4, 6-12, 14, 16-19, 22-27, 38-41, 44-46, 48-74, and 76-80 read on the elected species and an action on these claims follows.

3. Claims 1-4, 6-12, 14, 16-19, 22-27, 53-69, and 78-79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-4, 6-12, 14, 16-19, 22-27, 38-69, 76, and 78-80, the preamble of the claim is directed to the subcombination "a ballistic barrier" or "fire barrier" whereas the body of the claim is directed to the combination (a ballistic barrier in combination with a vehicle). Applicant is required to clarify whether the claims are intended to be drawn to the combination or the subcombination and to amend the claims consistent with the intent.

Throughout the claims, use of the phrase "high strength" makes the claim indefinite because the term "high" is a relative term that only has meaning when used in a comparative application.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 4, 6-8, 10-12, 14, 16-18, 22-24, 26-27, 38-41, 44-45, 48-49, 51-56, 58-65, 67-74, 76, and 80 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagumo.

Nagumo discloses a ballistic barrier comprising:

- | | |
|--|---------------------------------------|
| a) an outer layer, | 1 |
| b) at least one layer of high strength fabric, | 3 or 4 |
| c) an inner panel, and | 4 or 5 |
| d) a plurality of plies of aramid or polymer material. | page 7, lines 16-19 of
translation |

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 19, 46, and 77-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagumo in view of Pepin.

Nagumo applies as previously recited. However, undisclosed is a fabric layer that is felt.

Pepin teaches a fabric layer that is felt, col. 3, lines 30-33. Applicant is substituting one fabric layer for another in an analogous art setting as explicitly encouraged by the secondary reference (see Pepin, col. 3, lines 11-33). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Pepin to the Nagumo ballistic barrier and have a ballistic barrier whose fiber layers are of a different material type.

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8. Claims 9, 25, 57, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagumo in view of Dragone et al..

Nagumo applies as previously recited. However, undisclosed is a fabric layer that is polybenzoxazole. Dragone et al. teach a fabric layer that is polybenzoxazole, col. 4, line 45. Applicant is substituting one material type for another in an analogous art setting as explicitly encouraged by the primary reference, see page 7, lines 16-19 of translation. It would have been obvious to a person of ordinary skill at the time of the invention to apply the teachings of Dragone et al. to the Nagumo ballistic barrier and have a ballistic barrier with a fabric material of a different material type.

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-4, 6-12, 14, 16-19, 22-27, 38-41, 44-46, 48-74, and 76-80 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6-9, 11-12, 15-17, 20-23, 25-30, 32-34, 37-41, 51-58, 61-64, 66-70, 73-76, 78, and 80-83 of copending Application No. 09/325,596. Although the conflicting claims are not identical, they are not patentably distinct from each other because of common

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claim language directed to an outer shell, an inner panel, and at least one layer of fabric of polymer, aramid, polyethylene, or polybenzoxazole material.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.



**STEPHEN M. JOHNSON
PRIMARY EXAMINER**

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
December 11, 2001